No.

In the Superior Court,

MONTREAL.

THE REVEREND ROBET DOBIE,

Petitioner;

vs.

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES' FUND OF THE PRESBYTERIAN CHURCH OF CANADA, IN CONNECTION WITH THE CHURCH OF SCOTLAND, *et al.*,

Respondents.

PETITION.

MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

HON. J. J. C. ABBOTT, Q. C.,
Counsel.

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CANADA,
PROVINCE OF QUEBEC,
District of Montreal.

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Respondents.

To the Honourable the Superior Court for Lower Canada, District of Montreal, or to any one of the Honourable Justices of the said Court sitting, in and for the District of Montreal.

The humble Petition of the Reverend Robert Dobie, of Milton, in the County of Halton, in the Province of Ontario, and Dominion of Canada, Minister; personally, and in his qualities hereinafter mentioned, Petitioner, complains of the "Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland," a body politic and corporate, duly incorporated, and having an office and its principal place of business in the City of Montreal, and of the Reverend Daniel M. Gordon, Bachelor of Divinity, 10 Minister of St. Andrew's Church of Ottawa, Province of Ontario; Reverend John Cook, Doctor of Divinity, Minister of St. Andrew's Church, of Quebec, Province of Quebec; Reverend John Jenkins, Doctor of Divinity, Minister of St. Paul's Church, of Montreal, Province of Quebec; Reverend Gavin Lang, Minister of St. Andrew's Church, of Montreal, Province of Quebec; Sir Hugh Allan, of Ravenscraig, Montreal, Province of Quebec; John L. Morris, Esquire, Advocate, of Montreal, Province of Quebec; Robert Dennistoun, Esquire, County Judge, of Peterborough, Province of Ontario; and William Walker, Esquire, Merchant, of Quebec, Province of Quebec; the Reverend John H. Mackerras, of Kingston, in the Province of Ontario; William Darling, Esquire, and Alexander Mitchell, both Merchants of the City of Montreal, 20 aforesaid, Respondents; and avers:

That Petitioner is a Minister of the Presbyterian Church of Canada in connection with the Church of Scotland, and a member of the Synod thereof and Minister of the Church and Congregation designated "St. Andrew's Church" in Milton, aforesaid, in connection with and under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That said Petitioner is a Member and Minister of the Church of Scotland, and a Protestant Clergyman.

That the said Respondents, the Board for the Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church 30 of Scotland, is a body politic and corporate, duly incorporated under a Statute of

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the heretofore Province of Canada, 22; Vic. Cap. 66; having an office and its principal place of business in the city of Montreal, in the District of Montreal, in the Province of Quebec.

That, in the year eighteen hundred and fifty, Petitioner was duly licensed as a probationer and minister of the Church of Scotland by Law established in that part of the United Kingdom of Great Britain and Ireland, called Scotland, and Petitioner came to the heretofore Province of Lower Canada, now the Province of Quebec, as an ordained missionary of the said Church of Scotland in the year eighteen hundred and fifty-two, and thereupon commenced and continued to labour and preach and teach as a missionary and minister of said last mentioned 10 Church continuously in the said City of Montreal, until the year eighteen hundred and fifty-three.

That subsequently, on or about the seventh day of October, eighteen hundred and fifty-three, Petitioner, as a minister and missionary of the said Church of Scotland, removed from the said City of Montreal, and was admitted to and became a member of the Presbytery of Glengarry, in the now Province of Ontario, which said Presbytery was then and still is under the ecclesiastical jurisdiction of the Presbyterian Church of Canada, in connection with the Church of Scotland, and of the Synod of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and the Petitioner thereupon became a member and a ministe 20 of the said Presbyterian Church of Canada, in connection with the Church of Scotr land, and as such was duly appointed as minister and incumbent to the charge and pastorate of the Church and Congregation in connection therewith, designated the Church and congregation of Osnabruck, situated in the Township of Osnabruck, in the County of Stormont, in the now Province of Ontario, then the section of the Province of Canada, known and designated as Upper Canada, and also as Canada West.

That since said last mentioned date, Petitioner has continued to be and to act as a minister of the said Presbyterian Church of Canada, in connection with the 30 Church of Scotland, within the heretofore Province of Canada and within the Dominion of Canada, and has been at all times, and is now, as such, in good standing in the said Church and in the Synod thereof.

That the Petitioner, as a member and minister of the Church of Scotland, and as a member and minister of the Presbyterian Church of Canada, in connection with the Church of Scotland, and as a member of the Synod of the said last mentioned Church, and as a Protestant clergyman, since the date of the Petitioner's induction into the ministry as aforesaid, continuonsly unto the present time, became and was entitled to a share of and to a right of ownership in and to participate in the proceeds of certain lands of the Crown within the Provinces of Upper and 40 Lower Canada, respectively, and in the rents, profits and emoluments derivable therefrom, as in the Acts and Enactments relating thereto declared.

That by Acts of the Imperial Parliament of Great Britain, and of the Imperial Parliament of the United Kingdom of Great Britain and Ireland, the Sovereigns of Great Britain and of the United Kingdom of Great Britain and Ireland, were empowered to authorize the Governor, or Lieutenant Governor, of each of the then Provinces of Upper and Lower Canada, respectively, to make from out of the Lands of the Crown within said Provinces respectively, such allotment and appropriation of Lands as therein mentioned, for the support and maintenance of the Protestant

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clergy within the said Provinces, and to apply the rents, profits and emoluments which might at any time arise from such Lands, so allotted and appropriated, solely for the maintenance and support of a Protestant clergy within the Province in which the same might be situated and to no other purpose whatever.

That subsequently thereto, in pursuance of the said Acts, certain Lands of the Crown were from time to time reserved for the purposes mentioned therein, which said lands were known, and were and are commonly designated by the name of the "Clergy Reserves."

That the Governor, Lieutenant-Governor, and Administrator of the heretofore Provinces of Upper and Lower Canada, respectively, were empowered with the consent of the Executive Council of such Provinces, respectively, and in pursuance of His Majesty's instructions, to sell and convey a part of the said "Clergy Reserves" in each of the said Provinces, and to invest the proceeds of such sales in the Public Funds of the said United Kingdom, and to appropriate the dividends and interests of the moneys so invested for the support and maintenance of a Protestant clergy within the said Provinces, solely and to no other purpose whatever.

That by another Imperial Act, the sale of the entire Clergy Reserves in the Province of Canada and the investment of the proceeds of such sale, and the distribution of the interests and dividends of such investment, subject to certain conditions, were authorized for the purposes hereinbefore mentioned.

That by another Imperial Act the Legislature of the heretofore Province of Canada was authorised to dispose of said Clergy Reserves and to make such investment of the proceeds thereof as to the said Legislature might seem meet, subject to the proviso, that it should not be lawful for the said Legislature of the Province of Canada, by any Act or Acts thereof as aforesaid, to annul, suspend or reduce any of the annual Stipends which had, previously thereto, been already assigned and given to the clergy of the Churches of England and Scotland, or to any other religious bodies or denominations of Christians in Canada (to which the faith of the Crown was pledged) during the lives or incumbencies of the parties then receiving the same, or to appropriate or apply to any other purpose, any part of the said proceeds, investments, interests, dividends, rents and profits that might be required for the payment of the stipends and allowances due or accruing to the Ministers and Missionaries of the said churches of England and Scotland during their lives or incumbencies.

That the Imperial Acts, to wit, the Acts of the Parliament of Great Britain and of the United Kingdom of Great Britain and Ireland hereinbefore referred to, the whole of which are herein invoked, are specifically referred to in the Act passed by the heretofore Province of Canada, in the eighteenth year of the reign of Her Majesty Queen Victoria, entitled, 18 Victoria, Chapter 2.

That under and by virtue of the said last mentioned Act, it was enacted and declared that the moneys arising from the sale and disposal of the said Clergy Reserves in the said Province of Upper Canada should continue to form a separate fund, which should be called the "Upper Canada Municipalities' Fund," and that the moneys arising from the sale and disposal of the Clergy Reserves in the said Province of Lower Canada should continue to form a separate fund, which should be called the "Lower Canada Municipalities' Fund," and that after deducting the

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necessary expenses attending the sales of the said Clergy Reserves, and managing the same and the said Funds, the money forming the said Funds, or that had previously arisen therefrom, should be paid into the hands of the Receiver General of the heretofore Province of Canada, to be by him applied according to the purposes of the said last mentioned Act.

That by virtue of the said last mentioned Act, the annual stipend and allowance which had been, before the passing of the Act of Parliament of the United Kingdom, in the sixteenth year of Her Majesty's reign, assigned or given to the clergy of the Churches of England and of Scotland, or to any other religious bodies or denominations in either section of the Province, and chargeable under the said Act of Parliament on the Clergy Reserves in such section (and to which the faith of the crown was pledged) should, during the natural lives or incumbencies of the parties, (to wit, the Ministers and Missionaries of the said churches and religious denominations receiving the same at the time of the passing of the said Act, to wit, the Imperial Act 16 Vict.) be a first charge on the Municipalities' Fund for that section of the Province, and should be paid out of the same in preference to all other charges or expenses whatever.

That by the Act of the late Province of Canada (18 Vic: Cap. 2) it was enacted that the Governor of the said Province of Canada might, whenever he might deem it expedient, with the consent of the parties and bodies severally interested, commute with the said parties such annual stipends or allowances for the value thereof, to be calculated at the rate of six per centum per annum upon the probable life of each individual, and that such commutation amount should be paid accordingly out of that Municipalities' Fund, upon which such stipend or allowance was made chargeable by the said last mentioned Act.

That under and by virtue of the said last mentioned Act, each of the Ministers and Missionaries of the Presbyterian Church of Canada in connection with the Church of Scotland, then receiving benefits within the said Province of Canada from the said Clergy Reserves, or from the proceeds thereof, or from the Municipalities' Funds within the respective sections of the said Province of Canada, was entitled to receive a sum of money as commutation for the value of the annual stipend or allowance payable to him therefrom, and for the interest which he had individually, and as a member of the Presbyterian Church of Canada, in connection with the Church of Scotland, in the said Clergy Reserves and in the said Municipalities' Fund, arising therefrom.

That the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, was duly summoned for the purpose of taking such steps as might be necessary to enable the said Synod and the members thereof to take advantage of the commutation clauses in the said Act of the Legislature of Canada, 18 Vict. Cap. 2, and the said Synod duly met and determined and decerned as set out in the minutes hereinafter cited, in the City of Montreal, on the tenth and eleventh days of January, eighteen hundred and fifty-five.

The following is a copy of the Proceedings of said Synod, extracted from its official records at pages three to eight of the Proceedings of Synod for eighteen hundred and fifty-five.

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ACTS AND PROCEEDINGS

OF THE

Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, begun at Montreal the tenth day of January, and concluded the eleventh day of January, eighteen hundred and fifty-five years.

SESSION XXVI.

Diei I.

At Montreal, and within St. Andrew's Church there; Wednesday, the tenth day of January, one thousand eight hundred and fifty-five years. 10

The which day, after sermon by the Reverend Dr. Mathieson, from Psalm XLVIII. 12. 13: "Walk about Zion and go round about her, tell the towers thereof: "mark ye well her bulwarks, consider her palaces, that ye may tell it to the gene-"ration following," the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, *pro re nata*, and was constituted with prayer by the Moderator, the Reverend James Williamson, A. M. Sederunt: Mr. James Williamson, *Moderator*; Mr. John McMurchy, Mr. John Barclay, Dr. Alexander Mathieson, Mr. James Anderson, Mr. James C. Muir, Dr. John Cook, Mr. William Simpson, Mr. Alexander Wallace, Dr. Robert McGill, Mr. James T. Paul, Mr. Thomas 20 Haig, Mr. Archibald H. Milligan, Mr. John McDonald, Mr. John McKenzie, Mr. Hugh Urquhart, Mr. John McLaurin, Mr. Thomas McPherson, Mr. Eneas McLean, Mr. Donald Munro, Mr. Thomas Scott, Mr. Andrew Bell, Mr. Robert Dobie and Mr. John White, *Ministers*; together with Mr. Alexander Morris, Mr. John Thompson, Mr. Thomas A. Gibson, and the Hon. Thomas McKay, *Elders*.

The Moderator laid before the Synod a Requisition, which had been addressed to him, calling on him to summon a meeting of the Synod; also a copy of his circular calling the present meeting. The same were read, as follows:—

QUEBEC, 11th Dec., 1854.

Reverend and Dear Sir, 30

I beg to intimate to you that it is the opinion of the Committee of Synod, appointed to watch the progress of Legislation in respect of the Clergy Reserves, that the Bill introduced by Government, having now passed both Houses of the Legislature, it is desirable that a meeting of Synod should be called as early as possible for the purpose of taking such steps as may be necessary to take advantage of the commutation clause in said Bill, and in name of the Committee I beg very respectfully to request that you will call such meeting at the time and place you think most convenient.

I am, Reverend and Dear Sir,

Your faithful servant, 40

JOHN COOK.

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We, the undersigned, hereby concur in the necessity of calling a special meeting of Synod at the earliest period the forms of the Church will admit.

ALEX. MATHIESON,
ROBERT McGILL.

The Reverend,
The Moderator of the Synod of the
Presbyterian Church of Canada,
in connection with the Church of Scotland.

KINGSTON, 20th December, 1854.

Reverend and Dear Sir,— 10

In compliance with a request addressed to me by the Convener and other members of the Committee appointed to watch over the progress of legislation in respect to the Clergy Reserves, to call a special meeting of Synod as early as possible for the purpose of taking such steps as may be necessary to take advantage of the Commutation clause in the Act which has lately been passed by the Provincial Parliament, I have now to intimate to you that a Special Meeting of Synod will be held in St. Andrew's Church, Montreal, on 10th January, 1855, being the second Wednesday of the month, at half-past six p.m.

I am. Reverend and Dear Sir,

Yours faithfully, 20

JAMES WILLIAMSON, *Moderator.*

P.S.—It has been thought by several of my brethren, with whom I have conferred on the subject, and I concur in the opinion, that in the circumstances of the case, Montreal is, on the whole, the most suitable place for the meeting of Synod on this occasion.

The Synod unanimously agreed to approve the Moderator's conduct in calling this meeting.

The Synod then called for the report of the Committee appointed to watch over the interests of the Church in regard to the Clergy Reserves, which was given in and read by Dr. Cook, the Convener, stating that the Bill for the Secular- 30 ization of the Clergy Reserves, which had been introduced into Parliament by the Government, had been carried in both Houses, and assented to by the Governor-General:—that it contained a clause securing to all ministers settled previous to the 9th May, 1853, the date of the passage of the Imperial Act, payment of their salaries from the Clergy Reserve Fund during their lives or incumbencies, and at the same time authorizing the Government to commute the claims of incumbents, with the consent of the parties and bodies severally interested, and that the Committee, for reasons which they stated, had not considered it expedient to interfere in any way with the passing of the said Bill, but, feeling assured from many considerations that it would be for the benefit of the Church to take advantage of 40 the Commutation clause of the Act, the Committee had requested the Moderator to call a *pro re nata* meeting of Synod to take the matter into consideration, and make the necessary arrangements; and the Committee further, and at great length, recommended that the Synod should agree to commutation.

The Synod approved of the conduct of the Committee, and after some discussion, agreed to defer the further consideration of the report until to-morrow, and

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instructed the aforesaid Committee to draft resolutions to be then laid before the Synod for their consideration as to their action in the matter.

The Synod agreed to spend a portion of time in the morning in devotional exercises.

The Synod then adjourned, to meet again at half-past eleven o'clock to-morrow forenoon, and was closed with prayer.

Diet II.

At Montreal, and within St. Andrew's Church there; Thursday, the eleventh day of January, one thousand eight hundred and fifty-five years:— 19

The which day, the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, met, according to adjournment, and was constituted with prayer.

On the call of the Moderator, the Rev. Dr. Cook conducted the devotional exercises of the Synod in praise, reading the scriptures, and prayer.

The minutes of yesterday were read and approved.

The clerk stated to the Synod, that he had received, a considerable time ago, a letter from the Inspector General's Department of the Government, requesting him to make a return, to be laid before Parliament, of all persons connected with 20 this Church, "who at the date of the passing of the Act of the Imperial Parliament to make provision concerning the Clergy Reserves of this Province, viz: 9th May, 1853, were receiving any income or allowance from such portion of the proceeds of the Clergy Reserves as had been granted to the Synod of the Presbyterian Church of Canada, in connection with the Church of Scotland, specifying the names and ages of such persons, the annual amounts of their allowance, and through whom it is paid;" and that he had immediately issued a circular to the several parties, requesting a statement of their ages, to be returned to him,—Mr. Allan, of Montreal, having kindly offered to furnish him with some other items;—but that he had been as yet unable to make the required return, in consequence of a con- 30 siderable number of the ministers having neglected to make returns to him, although written to a second time on the subject; and that he had also, at the suggestion of some of the Clergy Reserve Commissioners, written to all of the parties whose names were on the Roll for salaries. The Synod, while approving of the conduct of the clerk, directed him to use all diligence in procuring as soon as possible, the whole of the required information, and in transmitting to the Government the list of incumbents up to 9th May, 1853, to furnish, at the same time, the names of those since put upon the roll as having, in the estimation of the Synod, claims upon the Fund.

The Committee, appointed yesterday to arrange measures for the considera- 40 tion of the Synod, reported certain resolutions which the Synod proceeded to discuss at length.

The Synod, having heard the report of the committee appointed by the Synod to watch over the interests of the Church, in as far as these might be affected by the action of the Legislature on the Clergy Reserves, and, also, the verbal reports of such members of the committee as had been in communication with

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members of the Government on the subject,—and, having seriously and maturely considered that clause of the Clergy Reserves Act, lately passed by the Provincial Parliament at its present session, by which His Excellency the Governor in Council is authorised, with the consent of the parties interested, to commute the salaries or allowances of ministers chargeable for life or during their incumbencies on the Clergy Reserves Fund, for their value in money,—Resolved,

"1st. That it is desirable that such commutation, if upon fair and liberal "terms, should be effected; and that the Rev. Alex. Mathieson, D.D., of Mon- "treal, the Rev. John Cook, D.D., of Quebec, Hugh Allan, Esq., of Montreal, John "Thompson, Esq., of Quebec, and the Hon. Thomas McKay, of Ottawa City, be the 10 "Synod's Commissioners, with full power to give the formal sanction of the Synod "to such commutation as they shall approve, the said Commissioners being hereby "instructed to use their best exertions to obtain as liberal terms as possible; the "Rev. Dr. Cook to be Convener; three to be a quorum; the decision of the majority "to be final, and their formal acts valid; but that such formal sanction of the Synod "shall not be given except in the case of Ministers who have also individually given "them, the said Commissioners, power and authority to act for them in the matter "to grant acquittance to the Government for their claims to salary to which the faith "of the Crown is pledged; and to join all sums so obtained into one Fund, which "shall be held by them till the next meeting of Synod, by which all further regu 20 "lations shall be made; the following, however, to be a fundamental principle- "which it shall not be competent for the Synod at any time to alter, unless with, "the consent of the Ministers granting such power and authority; that the in- "terest of the fund shall be devoted, in the first instance, to the payment of £112 "10s. each, and that the next claim to be settled, if the Fund shall admit, and as "soon as it shall admit of it, to the £112, 10s., be that of the Ministers now on the "Synod's Roll, and who have been put on the Synod's Roll since the 9th May, "1853; and, also, that it shall be considered a fundamental principle, that all "persons who have a claim to such benefits, shall be Ministers of the Presbyterian "Church of Canada, in connection with the Church of Scotland, and that they 30 "shall cease to have any claim on, or be entitled to any share of said commuta- "tion Fund whenever they shall cease to be Ministers in connection with the said "Church.

"2nd. That so soon as said commutation shall have been decided upon, and "agreed to by the said Commissioners, the Rev. John Cook, D.D., of Quebec, shall "be fully empowered and authorised, and this Synod hereby delegate to the said "Rev. Dr. John Cook full power and authority to endorse and assent to the several "Powers of Attorney from the individual parties on behalf of the said Synod, and "in their name, and as their Act and Deed, as evidencing their assent thereto.

"3rd. That all Ministers be, and they are hereby enjoined and entreated, (as to 40 "a measure by which, under Providence, not only their own present interests will "be secured, but a permanent endowment for the maintenance and extension of "religious ordinances in the Church) to grant such authority in the fullest manner, "thankful to Almighty God that a way so easy, lies open to them for conferring so "important a benefit on the Church.

"4th. That the aforesaid Commissioners be a Committee to take the necessary "steps to get an Act of Incorporation for the Management of the General Fund,

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"so to be obtained; the aforesaid Commissioners to constitute the said Corporation "till the next meeting of Synod, when four more members shall be added by the "Synod."

The Synod ordered the minutes of this meeting to be printed, and a copy sent to each Minister as soon as possible, and they further instructed their Commissioners, named above, to address a circular to the several ministers, showing them the importance of commuting upon the plan agreed to at this meeting, and giving them full information on the subject.

The Synod requested their Moderator to convey to the Hon. John Hamilton, of Kingston, and the Hon. Thomas McKay, of Ottawa, the thanks of this Synod for the assistance afforded by them to the Clergy Reserve Committee of this Synod, when lately met at Quebec, and for their exertions on behalf of the interests of this Church, especially during the present session of Parliament.

The business for which the special meeting of Synod had been called, having been finished, the Reverend Dr. Mathieson stated "that he availed himself of the opportunity which this special meeting of Synod afforded, to direct the attention of the congregations within the bounds to the call made by the General Assembly of the Church of Scotland, and generously responded to by every parish in the land to contribute to the National Patriotic Fund for the relief of the wives and children of the brave men who have been disabled or found a soldier's grave in fighting for the honour of their country, and the liberty, and (it is to be hoped), the ultimate peace of the world, and the advancement of the Redeemer's Kingdom; and, also, to the circumstance, that several of the congregations in connection with this Synod have already contributed or were anxious to contribute their subscriptions through the channel thus afforded them, to the Patriotic Fund." Whereupon Dr. Mathieson moved to resolve, and it was resolved accordingly:

"That this Synod deeply sympathise with Her Majesty and her people in the great struggle, in which she has been constrained to engage, for the liberty and independence of nations. Sympathising also with the numerous families, whose hearts, in the inscrutable Providence of God, have been filled with sorrow for the loss of their natural protectors, or their friends who have fallen in the contest, and being deeply sensible of, and grateful for, the inestimable blessings, both civil and religious, which this colony enjoys, under Her Majesty's gracious sway, and its connection with the parent State, this Synod strongly recommend to all the congregations within their bounds, not only as an expression of their gratitude and sympathy, but as a solemn duty, at the earliest convenient season, and in the way that to the Minister and Elders seems best, to make contributions to the National Patriotic Fund:—and that Hew Ramsay, Esq., Montreal, be appointed to receive from the respective congregations their several contributions, and transmit them to William Young, Esquire, W.S., Edinburgh, who has been appointed to receive the contributions of the Church."

The Synod was then closed with prayer.

That the said proceedings of the said Synod are valid and binding; that the terms and conditions thereby established and declared, form the basis for the distribution and application of the said Fund, hereinbefore and hereinafter referred to.

That the sole business submitted at the meeting of the said Synod of the

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Presbyterian Church of Canada, in connection with the Church of Scotland, at the diets thereof, held on the tenth and eleventh days of January, eighteen hundred and fifty-five, was the consideration of giving force and effect to the clause permitting the Governor of the then Province of Canada in Council to commute the claims of Ministers, Incumbents and Missionaries upon the Clergy Reserves Funds, with the consent of the bodies and parties severally interested, as set out in the minutes hereinbefore recited.

That the said Synod, on its own behalf and on behalf of its members, determined at its said meeting to take advantage of the said commutation clause, and appointed a committee, styled Commissioners, to give effect to the said determination, and the said Synod ordered said minutes to be printed, and instructed said Committee to send a copy thereof to each minister entitled to commute. 10

That the said Reverend John Cook, Doctor of Divinity, was appointed convener and Chairman of said Committee, and as such, was authorized to, and did, address a circular to all the then Ministers and Incumbents of the said Church entitled to benefits from the said Funds, among others to the Petitioner, which circular was in the following words :—

"Quebec, 24th February, 1855.

"Revd. Sir,

"I am instructed by the Commutation Committee appointed at the last meet- 20
"ing of Synod, to enclose to you two Powers of Attorney, approved by the "Government and by the Synod, which it is necessary you should sign and for- "ward to Hugh Allan, Esq., Montreal, without delay,—in order to our obtaining a "commutation of Clergy Reserve money, which will be advantageous to the "Church. All the Ministers present at the meeting of Synod in January, agreed "to commute, and the Ministers of the Church of England have unanimously "signed similar powers to those now forwarded to you.

"The fundamental conditions contained in the minutes of the Synod, held at "Montreal, on the 11th January, 1855, which are alluded to in one of these "powers, and which by the terms of the said minutes, it shall not be competent 30
"for the Synod at any time to alter, unless with the consent of the Ministers "granting such power and authority," are first, "That the interest of the Fund "shall be devoted in the first instance, to the payment of salaries of £112 10s "each," to such Ministers, "and that the next claim on the Fund shall be that of "Ministers on the Roll of the Synod, and who have been put on the Synod's Roll "since the 9th May, 1853;" and, second, "That all persons who have a claim to "such benefits, shall be Ministers of the Presbyterian Church of Canada, in con- "nection with the Church of Scotland, and shall cease to have any claim, when "they cease to be Ministers in connection with the said Church."

"Of these conditions it is presumed you will approve, and I have the satisfaction 40
"to inform you, that on the terms proposed by the Government, and to which the "Commutation Committee are prepared to agree, as soon as these powers are "received from the Ministers of the Church, it will be certainly possible to comply "with the first condition, in so far as respects Ministers settled before the 9th "May, 1853, and, preserving the capital, to secure to them, from the interest "salaries of £112. 10s. for life, or incumbency. And it is, therefore, earnestly en-

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"treated that there may be no hesitation or delay in signing and forwarding these "powers.

"I am further instructed to call your attention to the following Resolution, "passed unanimously, at the last meeting of Synod :—

"That all ministers be, and they are hereby enjoined and entreated, (as to a "measure, by which, under Providence, not only their own private interests will "be secured, but permanent endowment for the maintenance and extension of Reli-"gious ordinances in the Church,) to grant such authority as is necessary to effect a "commutation, in the fullest manner, thankful to Almighty God, that a way so "easy is open to them for conferring so important a benefit on the Church." Not "doubting that you will concur in the views of the Synod,

"I am,

"Rev'd. Sir,

"Your obedient Servant,

(Signed) JOHN COOK, *Convener*."

"To the Reverend."—

That Petitioner and other Ministers and Incumbents of the said Presbyterian Church of Canada, in connection with the Church of of Scotland, and the Missionaries of the said Church of Scotland, renounced their individual rights in the said Fund, and authorised the said John Cook to act for each of them and in their behalf, for and by reason of the terms and conditions of the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five, and more especially upon the consideration that the Fund to be created thereby would be a permanent endowment for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That no change could be made in the distribution and application of the interest and revenues accruing on the said Fund received under the said Commutation Act, and the Acts therein referred to, without the full consent and approval of each and all of the commuting Ministers who renounced their individual interests therein, in consideration of the matters set out in the resolutions passed at the said meeting of Synod on the tenth and eleventh January, eighteen hundred and fifty-five.

That on and since the ninth of May, eighteen hundred and fifty-three, the Petitioner was entitled to the benefits derivable from the proceeds of the said Clergy Reserves under the said Imperial and Provincial acts relating thereto, and on the ninth day of May, eighteen hundred and fifty-three, Petitioner was in the receipt of a stipend and allowance therefrom amounting to upwards of one hundred pounds annually, and further at the date of the passing of the resolutions of the said Synod in favour of the said commutation, to wit, on the eleventh day of January, eighteen hundred and fifty five, the annual value of Petitioner's stipend and allowance, forming a life claim payable to him by and out of said sums, amounted to the sum of one hundred and fifty pounds currency per annum, and the said Petitioner has never done anything to forfeit his right to participate in the said Fund, or in the proceeds, profits or revenues thereof.

That during the year eighteen hundred and fifty-five, and after passing of the said resolutions by the said Synod, the said Petitioner did commute the claims

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due to him by the said Fund, with the Government, by and through the said Commissioners, upon the conditions set out in said resolutions, and the said Petitioner did thereby consent to renounce his personal rights in the said Clergy Reserves, and in the proceeds thereof in favour of the said Presbyterian Church of Canada, in connection with the Church of Scotland, and did consent that the amount of the capital sum due and to accrue to him, should be joined with the amount due and to accrue to other Ministers of the said Church, and that all sums thus obtained should be joined into one fund, which should be held in Trust by the said Commissioners, in the said resolution named, till the meeting of the Synod next ensuing, by which all further regulations should be made, but the said renunciation of the Petitioner's rights was made subject to the fundamental principle (which it was declared not to be competent for the said Synod at any time to alter, unless with the consent of the Ministers granting such power and authority) namely, that the interest of the said Fund to be so created, should be devoted, in the first instance, to the payment of one hundred and twelve pounds, ten shillings, to each member then on the Synod Roll and who was on the Synod Roll on ninth May, eighteen hundred and fifty-three, and that the next claim to be settled, if the said fund should admit, and as soon as it should admit of it, to the one hundred and twelve pounds, ten shillings, be that of the Ministers whose names at the time of the passing of the said resolutions were on the said Synod Roll and which had been put on the said Synod's Roll since the ninth of May eighteen hundred and fifty-three, up to the date of the passing of the said resolution; and, also, upon the condition that it should be considered a fundamental principle that all persons who have a claim to such benefits should be ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, and that they should cease to have any claim on or to be entitled to any share of the said Commutation Fund whenever they should cease to be Ministers in connection with the said Church.

That the said Petitioner has always maintained his connection with the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has done nothing to forfeit his rights and privileges therein.

That the funds placed in the hands of the said Commissioners, subject to the terms, conditions and fundamental principles of the said resolutions, to be held for the purpose, and subject to the restrictions herein mentioned, to wit, the funds resulting from the original Commutation claims of the Ministers upon the Clergy Reserves, exclusive of all other Contributions to it, amounted in eighteen hundred and fifty-five to the sum of One Hundred and Twenty-Seven Thousand Pounds, (£127,000) which said sum constituted, and was, and is, a Trust Fund, which could not be diverted from the purposes for which it was originally created, and the said Commissioners and their legal successors held the same in trust for the Presbyterian Church of Canada, in connection with the Church of Scotland.

That afterwards, an Act of the heretofore Parliament of Canada was passed (22 Vic., Cap. 66) to incorporate a Board for the management of the said Fund, and for such other funds as should be contributed, subscribed or paid in, from time to time, and that it was therein declared, at the time of the passing of the said Act, that said funds were held in trust by certain Commissioners on behalf of the said Church, and for the benefit of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

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That at the time of such Commutation the funds arising therefrom, and which were constituted into one fund, amounted to the sum of One Hundred and Twenty-seven thousand Pounds, which it was declared, by a By-law passed under the provisions of the last mentioned Act, should be kept separate and distinct from any other funds which might come into the possession of the Board of Management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with the Church of Scotland.

That under the provisions of the said last mentioned Act, a body corporate and politic was created under the name of the "Board for the Management of the "Temporalities' Fund of the Presbyterian Church of Canada, in connection with the "Church of Scotland," to wit, the Corporation, Respondents, which said Board it was declared, among other things, should consist of twelve members, of whom five should be ministers and seven should be laymen, all being ministers or members in full communion with the said Church, and of whom seven should be a quorum; and that the said Board should thenceforth have, hold, possess and enjoy, in trust for the said Church (meaning the said Presbyterian Church of Canada, in connection with the Church of Scotland) and for the purposes in the said Act and in the preamble thereof mentioned, all moneys, debentures, bonds, bank or other stocks and securities which were then held by the Commissioners of the said Church, in Trust for the said Church, under the terms of the resolutions of the tenth and eleventh of January, eighteen hundred and fifty-five, hereinbefore cited, and subject to the conditions in the said Act mentioned.

That the said last mentioned Corporation continued to manage and administer the Trust Fund arising from the original commutation, and divers other funds contributed for the purposes mentioned in the said last mentioned Act, until the fifteenth day of June, eighteen hundred and seventy-five, when the aggregate amount of the funds, assets, and money under the control of the said last mentioned Corporation, Respondent, and by them held in trust for the Petitioner and for all others entitled to participate in the revenues and interests accruing thereon, and for the benefit of said Church, amounted to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents, (463,371.52) at par value, according to statement dated first May, eighteen hundred and seventy-five, as set out in the Acts and Proceedings of the Synod of the said Church for eighteen hundred and seventy-five, at page forty-five of the Records thereof.

That an Act was passed by the Legislature of the Province of Quebec (38 Vic: Cap: 64) assented to on the twenty-third February, eighteen hundred and seventy-five, entitled an act to amend the act intituled "An Act to incorporate the "Board for the management of the Temporalities' Fund of the Presbyterian "Church of Canada, in connection with the Church of Scotland" and providing for the administration and distribution of the funds held and administered under the Act of the late Province of Canada (22 Vict: Cap: 66).

That the said Act of the Province of Quebec (38 Vic., Cap. 64) relates to subject matters beyond the competency of the Local Legislature under the British North America Act, 1867, to wit, the Act of the Parliament of the United Kingdom of Great Britain and Ireland, (30th and 31st Vic., Cap. 3), and the Legislature of the Province of Quebec was incompetent to pass said Act; and the said Act of

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the Province of Quebec, in so far as it derogates from, or purports to modify or vary the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, is null and of no effect.

That the subject matters of said Act of the Legislature of Quebec are not of a mere local or private nature within the Province of Quebec, but affect the rights of persons residing beyond the Province of Quebec, and not subject to its jurisdiction.

That the Petitioner is not subject to the legislation of the said Province of Quebec affecting his interests in the said funds, and the said Legislature of said Province of Quebec has exceeded its competency and jurisdiction in passing said Act. 10

That the interests of the Petitioner in the moneys arising from the said commutations and in the Temporalities' Fund, as constituted by the Act (22 Vic., Chap. 66) of the late Province of Canada, are not of a mere local or private nature in the Province of Quebec, but are a matter of general interest.

That the objects of the Corporation, Respondents, under the Act 22 Vic., Cap. 66, of the heretofore Province of Canada, were not, and are not, of a provincial nature, but extend to persons residing in the Provinces of Ontario and Quebec.

That the said Act of the Legislature of the Province of Quebec is illegal and unconstitutional, and beyond the competency of the said Legislature. 20

That the said Act of the Legislature of the Province of Quebec (38 Vic., Cap. 64) is further illegal and unconstitutional, in permitting and providing for the payment of an annual stipend to ministers who have ceased to be members of, or to have any connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and in providing that the Temporalities' Board, to wit, the Corporation, Respondents, should, if necessary, draw upon the capital fund, to wit, the Temporalities' Fund, in order to provide for the payment of the stipends and salaries to ministers, as mentioned in the said last mentioned Act, and in providing that: "As often as any vacancy in the Board for the "management of the said Temporalities' Fund occurs by death, resignation or 30 "otherwise, the beneficiaries entitled to the benefit of the said Fund may each "nominate a person, being a minister or member of the said United Church; or in the "event of there being more than one vacancy, then one person for each vacancy and "the remanent members of the said Board, shall thereupon from among the persons "so nominated as aforesaid, elect the person or number of persons necessary to fill such "vacancy or vacancies, selecting the person or persons who may be nominated by the "largest number of beneficiaries to nominate as aforesaid, the remanent members of "the Board shall fill up the vacancy, or vacancies, from among the Ministers, or "members of the said United Church," thus depriving a Minister who may have retained his connection with the Presbyterian Church of Canada, in connection 40 with the Church of Scotland, of the right to administer the funds under the control of the said Corporation, Respondents, and disfranchising and disqualifying all members of the said last mentioned Church from administering the said Fund which, of right, alone belongs to them; and further in setting aside the legal method for filling vacancies in the Board, Respondents, as prescribed by the said Act 22, Victoria, Chapter 66, and the By-Laws made thereunder. That the said Statute of the late Province of Canada, (22 Vic.: Cap. 66) is legally and constitutionally in

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full force and effect, and the Respondents are subject to its provisions, and the By-Laws made thereunder by the said Presbyterian Church of Canada, in connection with the Church of Scotland, previous to the fourteenth day of June, eighteen hundred and seventy-five, and by those members, Ministers, and Elders of the said last mentioned Church, who remained in connection therewith, and who have not seceded therefrom on and since the fifteenth day of June, eighteen hundred and seventy-five are now in full force.

That the said Respondents have no power to apply the capital sum of one hundred and twenty-seven thousand pounds, or the sum administered by them, to the payment of stipends or to any other purpose whatever, but the said sum and such other sums as should be contributed to it were intended to remain intact as a permanent endowment for the said Presbyterian Church of Canada, in connection with the Church of Scotland: as fully appears from the Minutes and the Synod letter of the Reverend John Cook hereinbefore cited, under the express provisions of both which the Petitioner surrendered his interests in the Clergy Reserves and their proceeds to the said Church.

That the said Respondents had power only to use and apply the revenues, interests and accruals of the said Endowment Fund, for the purposes mentioned in the said Act incorporating the Board, Respondents.

That the Corporation, Respondents, since the fifteenth day of June, eighteen hundred and seventy-five, up to the month of December, eighteen hundred and seventy-seven, have drawn upon the capital of the said Fund to the extent of the sum of forty thousand five hundred dollars and twenty-five cents, ($40,500.25), illegally and in contravention of the said Act (22 Victoria, Chapter 66) of the heretofore Province of Canada.

That the Reverend John Cook, Doctor of Divinity, of Quebec, the Reverend James C. Muir, Doctor of Divinity, of North Georgetown, in the Province of Quebec, and the Rev. George Bell, Doctor of Laws, (LL.D.), of Walkerton, in the Province of Ontario, were commutors, and did commute their claims, upon the said Clergy Reserves, and upon the funds arising therefrom, concurrently with the Petitioner, and under and subject to the terms of the fundamental principles hereinbefore cited, passed by the said Synod on the eleventh day of January, eighteen hundred and fifty-five, but on and since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, did join with another religious association called the Presbyterian Church in Canada, composed of persons who previous to the said fifteenth day of June, belonged to four separate and distinct religious organizations, and extending over various provinces of the Dominion, under four separate and distinct ecclesiastical governments, entirely unconnected with each other, to wit, the Canada Presbyterian Church, the Presbyterian Church of Canada, in connection with the Church of Scotland, the Church of the Maritime Provinces in connection with the Church of Scotland, and the Presbyterian Church of the Lower Provinces, several members from each of which said last mentioned religious organizations united themselves together in a new and distinct religious organization and association called the Presbyterian Church in Canada:—that the said Reverends John Cook, James C. Muir and George Bell, on said fifteenth day of June, eighteen hundred and seventy-five, ceased to be Ministers thenceforward of the Presbyterian Church of

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Canada, in connection with the Church of Scotland; and Petitioner avers that said Reverends John Cook, James C. Muir and George Bell, have not been entitled to receive any benefits from the said Fund, or to be paid any sums of money by the Corporation, Respondents, by reason of their having seceded from, and ceased to be Ministers of the said Presbyterian Church of Canada, in connection with the Church of Scotland.

That since the said fifteenth day of June, eighteen hundred and seventy-five, the said Corporation, Respondents, have paid to the said Reverend John Cook, the sum of eleven hundred and twenty-five dollars; to the said Reverend James C. Muir, the sum of nine hundred dollars; to the said Reverend George Bell, the sum 10 of eleven hundred and twenty-five dollars; out of the said Fund, and the interest and revenues thereof, for Commutation Allowances by the said Corporation, Respondents, alleged to have accrued on said Fund since the said fifteenth day of June, eighteen hundred and seventy-five, in favour of the said Reverends John Cook, James C. Muir, and George Bell, in their quality as members of the Presbyterian Church of Canada, in connection with the Church of Scotland; though since the said fifteenth day of June, eighteen hundred and seventy-five, the said Reverends John Cook, James C. Muir, and George Bell, have been and are ministers of the said new organization, styled the Presbyterian Church in Canada.

That Petitioner has reason to believe and verily believes, that the Corporation, 20 Respondents, will pay to the said Reverends John Cook, James C. Muir, and George Bell, the sum of two hundred and twenty-five dollars each, on or before the first day of January next, as Commutation Allowances from the said Fund, to each of the said last mentioned Ministers, in their quality as Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, for the half-year ending thirty-first of December, eighteen hundred and seventy-eight.

That preceding the fifteenth day of June, eighteen hundred and seventy-five, the Reverend John Fairlie, minister of L'Orignal, Province of Ontario, the Reverend David W. Morison, Bachelor of Arts, Minister of Ormstown, Province of Quebec, the Reverend Charles A. Tanner, of Richmond, Province of Quebec, 30 amongst others, not being of the number of original commutors, were not entitled to receive any allowance or stipend or revenue or emolument of any nature or kind from said Fund administered by said Respondents, under the terms of said statute 22 Vic., Cap. 66, unless the interest, revenues and accruals on said Fund, and contributions from other sources thereto, were sufficient to allow the payment of certain allowances or emoluments therefrom after the deduction of the sums payable to the original commutors.

That the said Reverend John Fairlie, Reverend David W. Morison, and Reverend Charles A. Tanner, of Richmond, Province of Quebec, have received from said Corporation, Respondents, since the fifteenth day of June, eighteen 40 hundred and seventy-five, for, and by reason of their connection with and having been Ministers of the Presbyterian Church of Canada, in connection with the Church of Scotland, since the said fifteenth day of June, eighteen hundred and seventy-five, the sum of Five Hundred Dollars each, to which said last mentioned Ministers were not entitled, both by reason of having ceased to be entitled to the benefits from the Fund administered by said Corporation, Respondents, under the terms of the resolution of the eleventh of January, eighteen hundred and fifty-

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five, the said Reverends John Fairlie, David W. Morison and Charles A. Tanner having ceased to be members of the Presbyterian Church of Canada, in connection with the Ceurch of Scotland, and having joined the said Presbyterian Church, in Canada as aforesaid, and because the revenues and interests accruing on said Fund administered by said Corporation, Respondents, were not sufficient to pay the said Reverends John Fairlie, David W. Morison, and Charles A. Tanner, any allowance or emolument whatever, after the payment and settlement of all legal claims upon the revenues of said fund, and said Reverends John Fairlie, David W. Morison and Charles A. Tanner, were not entitled, respectively, to said sums of Five Hundred Dollars each, either from the revenues and interest or from the capital of said Fund so administered, as aforesaid, by the Corporation, Respondents. 10

That by the terms of the said Statute, (22 Vic., Cap. 66), incorporating the Corporation, Respondents, it is provided that at the first meeting of the Synod of the said Church there should be elected, by the said Synod, seven members of the said Board, Respondents, of whom four shall be laymen and three ministers, all members of the Presbyterian Church of Canada, in connection with the Church of Scotland, in place of two laymen and one minister, members of the said Board, who should then retire, and that thereafter two ministers and two laymen should retire from the said Board annually, in rotation, on the third day of the annual meeting of the said Synod, and that the place of the retiring members of the said Board, Respondents, should be supplied by two ministers and two laymen, being ministers or members in full communion of the said Church, then to be elected by the said Synod. 20

That on the fourteenth day of June, eighteen hundred and seventy-five, the following persons composed the duly-elected, eligible members of the said Board, Respondents, entitled to administer the funds and property entrusted to them under the provisions of the said Act, as appears by the Acts and proceedings of the said Synod for the year eighteen hundred and seventy-five :—

Reverend John H. Mackerras, Master of Arts, Professor in Queen's College Kingston, Province of Ontario, the said Reverend Daniel M. Gordon, Reverend John Cook, D.D., Reverend John Jenkins, D.D., Reverend Gavin Lang, James Michie, Esquire, Merchant, Toronto, Province of Ontario; Alexander Mitchell, Esquire, Merchant, Montreal, Province of Quebec; William Darling, Esquire, Merchant, Montreal, Province of Quebec; the said Sir Hugh Allan, John L. Morris, Esquire, Robert Dennistoun, Esquire, and William Walker, Esquire. 30

That since the date of the said enactment, incorporating the Corporation, Respondents, (22 Vic., Cap. 66), four members of the said Board, Respondents, should have retired therefrom, at each annual meeting of the said Synod.

That in the month of June, eighteen hundred and seventy-six, the following members of the said Board, Respondents, by law ceased to be members of said Board, and should have retired therefrom, to-wit: the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, and Robert Dennistoun, Esquire. 40

That in the month of June, eighteen hundred and seventy-seven, the following members of the said Board by law ceased to be members of said Board, Respondents, and should have retired therefrom, to-wit: The said Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan.

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That in the month of June last past, (1878.) the following members of the said Board, Respondents, by Law ceased to be members of the said Board, and should have retired therefrom, to wit: the said Reverend J. H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire.

That the remaining members of the Board, to wit: the said James Michie, Esquire, has seceded from the said Presbyterian Church of Canada, in connection with the Church of Scotland, and has joined the said Presbyterian Church in Canada, and has ceased to be a member of the Presbyterian of Canada, in connection with the Church of Scotland, and has *ipso facto* vacated his seat as a member of the Board, Respondents, and the said Reverend John Jenkins, Reverend 10 Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, heretofore members of the said Board, Reverend John H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire; were not legally re-elected and appointed members of the said Board, Respondents, and they and the remaining member of the said Board illegally pretend to exercise and do in fact exercise and perform all the functions appertaining to legally elected and appointed members of the said Board.

That the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend 20 Daniel M. Gordon, John L. Morris, Esquire, and Sir Hugh Allan, Reverend John H. Mackerras, James Michie, Esquire, Alexander Mitchell, Esquire, and William Darling, Esquire, are not entitled to administer the said Fund, or to be or remain as members of the Corporation, Respondents, and should be removed from the said Board, and the said Respondents are not entitled further to administer the funds under the control of the Corporation, Respondents, or to make any infringement upon the capital thereof, or to disburse the revenues thereof in any manner whatever, the said Board being illegally constituted.

That the said Corporation, Respondents, have infringed upon the capital of the said Fund under their management and control in the manner hereinbefore 30 indicated, and have illegally paid money, proceeds of the capital and revenues of the said Fund, in the manner hereinbefore indicated, without any legal power or authority so to do, and have illegally continued and permitted the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, and John L. Morris, Esquire, Reverend John H. MacKerras, William Darling, Esquire, and Alexander Mitchell, Esquire; to act as members of the said Board, Respondents, without having fulfilled the formalities prescribed by law and the Act of Incorporation of the Corporation, Respondents, for their election as members of the said Board, and all the members now comprising the Board 40 of the Corporation, Respondents, are illegally exercising the power of legally elected members, and the said Corporation, Respondents, composed as aforesaid, are now acting beyond their power in continuing the exercise of the powers conferred on the said Board without having a *quorum* of the said Board duly elected as members of the said Board, and by permitting the said parties, not being members thereof, to take part in the deliberations and proceedings thereof, and by

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administering the funds under their control illegally and contrary to the terms of the Act of the heretofore Province of Canada, incorporating the Board to wit: 22 Vic., cap. 66.

That the Corporation, Respondents, have hitherto made the half-yearly payments of Ministers' allowances from said Fund sometime before the day on which such payments to Ministers would become due, to those entitled to receive same, and the Corporation, Respondents, as Petitioner has been credibly informed and believes are immediately about illegally to issue checks in payment of and to pay the pretended allowances which will become due on the first day of January next.

That the said Petitioner has a personal interest in the Funds administered by 10 the Respondents and more especially in that portion of the Funds so administered by them arising from the Commutation. of claims of Ministers upon the Clergy Reserves and the proceeds thereof, and the said Petitioner has a right to allowances therefrom for life, provided he maintains his connection with the Presbyterian Church of Canada, in connection with the Church of Scotland, and does not cease to be a Minister in connection therewith, which said allowances and which said interest in the said Funds are endangered by the infringement upon the Capital of the said Fund, made by the Board, Respondents, and by the illegal payments hereinbefore indicated or made, or that may hereafter be made by the Board, Respondents, out of the capital of the said Fund or the interest or revenues 20 accruing thereon.

That all the payments heretofore made by Respondents to the persons hereinbefore mentioned, since the fifteenth day of June, eighteen hundred and seventy-five, or contemplated to be made out of the said Fund, as hereinbefore stated, are contrary to the provisions of the statute of the heretofore Province of Canada, 22 Vic., Chap. 66, and in so far as they may be ostensibly authorised by the Acts of the Parliament of Quebec, or of any of them, are illegal and unconstitutional, and *ultra vires* of the Corporation, Respondents, as Petitioner is advised and verily believes.

Wherefore the said Petitioner, personally and in his said qualities, prays that 30 a Writ of Injunction may issue against the said Corporation, and against the said Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, enjoining them and each of them to appear before this Honorable Court or a Judge thereof, to answer the present Petition.

That the Act of the Legislature of the Province of Quebec, intituled "an Act to amend the Act, intituled, 'an Act to incorporate the Board for the management of the Temporalities' Fund of the Presbyterian Church of Canada, in connection with 40 the Church of Scotland," passed in the thirty-eighth year of Her Majesty's reign, (38 Vic., Chap. 64), may be adjudged and declared to be unconstitutional and illegal, and be rescinded and revoked, and that the subject matter thereof as therein presented may be declared to be *ultra vires* of the Legislature of the said Province of Quebec, and that it be declared and adjudged, by the judgment to be rendered upon this petition, that the said Corporation, Respondents, are acting and taking proceedings beyond their power, and without having fulfilled the formalities prescribed by law, and by the Act of Incorporation thereof, by permitting the said

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last named persons to act as members of the said Board and of the said Corporation, without having been elected as members of such Board in the manner provided by law, and by the said Act of Incorporation, and, further, by administering intermeddling with, and disbursing the funds and property of the said Corporation in a manner and for purposes not authorised by the said Act of Incorporation of the 22nd Vic., Chap. 66; and by holding, administering, dispensing and disposing of the funds and property of the said Corporation, without having a sufficient number of members of the said Corporation elected in the manner provided by law, and in the Act of Incorporation thereof, to constitute a quorum of the said Corporation or of the said Board. And that it be further adjudged and declared that the said Rev- 10 erend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Rev. John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, have no right or authority to sit, deliberate or act as members of the said Corporation or Board, and thereupon further prays that the said Corporation be by such judgment restrained from acting and proceeding in respect of the duties imposed upon them by the said Act of Incorporation of the 22nd Vic, Chap. 66; and from administering, using, dispensing or disposing of the funds and property of the said Corporation: and be ordered and enjoined not to act in respect of the said duties and powers, and in respect of the said 20 funds and property, until an adequate and sufficient number of members thereof shall have been duly elected in the manner and with the formalities provided by law and by the said last mentioned Act of Incorporation.

And further, that the Respondents, Rev. John Jenkins, Rev. Gavin Lang William Walker, Esquire, Robert Dennistoun, Esquire. Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, Reverend John MacKerras, William Darling, Esquire, Alexander Mitchell, and John L. Morris, Esquire, be restrained from acting as members of the said Board, and be enjoined not to sit or act as, or perform any of the functions of members of the said Board, unless and until they shall be duly elected members thereof, in the manner, and with the formalities 30 provided by the said Act of Incorporation of the said Board, 22 Vic. chap. 66.

And the Petitioner further prays, that it be ordered, that the said Respondents, and each and all of them do forthwith suspend any and all acts and proceedings in their several capacities respectively; in respect of the administration of the said funds and property, and in respect of all matters in dispute in this cause.

That it be adjudged and declared that the Fund administered by the Corporation, Respondents, amounting to the sum of four hundred and sixty-three thousand, three hundred and seventy-one dollars and fifty-two cents, ($463,371.52) is a Fund held in Trust by them for the benefit of the Presbyterian Church of Canada, in connection with the Church of Scotland, and for the benefit of the 40 Ministers and Missionaries who retain their connection therewith and who have not ceased to be Ministers thereof, and for no other purpose whatever.

That the said Reverend John Cook, Reverend James C. Muir, and Reverend George Bell, be declared to have ceased to be Members of the Presbyterian Church of Canada, in connection with the Church of Scotland, and not be entitled to any sum of money or benefit from the funds administered by Respondents. That the said Reverend John Fairlie, Reverend W. Morison and Reverend Charles A. Tanner be declared not entitled to receive any sum of money whatever from the

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funds administered by Respondents, and that Respondents be enjoined and ordered not to pay said Reverend John Cook, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morrison and Reverend Charles A. Tanner, or any of them, any sum of money whatever from the capital or revenues of the funds administered by them, and further, that the said Corporation Respondents, be adjudged and ordered not to pay to them the said Reverend John Cook, Reverend James C. Muir, Reverend George Bell, Reverend John Fairlie, Reverend David W. Morison, Reverend Charles A. Tanner, or to any other person whomsoever, any sum of money whatever out of the capital or revenues or interest accrued and to accrue on said Fund, under pain of all legal penalties, until such further order shall be made upon the said petition, as to this Honorable Court, or any Judge thereof shall seem meet and expedient. And the said Petitioner hereby declares his readiness to give good and sufficient security, in the manner prescribed by and to the satisfaction of the said Court or of a Judge thereof in the sum of Six Hundred Dollars or any higher sum fixed by the said Court or Judge for the costs and damages which the Respondents may suffer by reason of the issue of said Writ of Injunction, and the said Petitioner hereby offers as such security, James S. Hunter, Notary Public, and Joseph Hickson, Railway Manager, both of the City and District of Montreal, who will justify as to their sufficiency if required, the said Petitioner reserving the right to take such other and further conclusions in the matter, as he may be advised and permitted, the whole with costs of suit and of Exhibits against such of said Respondents as may contest the present action but without costs against such of the Respondents as may declare that they abide the order of the Court, of which costs the undersigned Attorneys pray distraction.

Montreal, 31st December, 1878.

(Signed,) MACMASTER, HALL & GREENSHIELDS,
Attorneys for Petitioner.

(Signed,) J. J. C. ABBOTT, Q. C.,
" M. M. TAIT,
Of Counsel.

(True Copy.)

I, the undersigned, one of the Justices of the Superior Court for Lower Canada, sitting in the District of Montreal, having read the foregoing Petition, and the affidavits and documentary evidence produced in support of the same, and seeing further the offer of the said Petitioner to give good and sufficient security in the manner prescribed by me and to my satisfaction, I do approve of the security offered by Petitioner and do order and prescribe that the said sureties offered to wit:—James S. Hunter, Notary Public, and Joseph Hickson, Railway Manager, both of the City and District of Montreal; do enter into a Bond before me to the

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extent of Twelve Hundred Dollars for costs and damages which the Respondents may suffer by reason of the Writ of Injuction herein ordered to issue; they then and there justifying as to their sufficiency upon oath; and that thereupon a Writ of Injunction do issue according to the prayer of the said Petition, to summon the Respondents to be and appear before any one of the Honourable Justices of the said Superior Court at Montreal aforesaid, on the thirty-first day of January next, (eighteen hundred and seventy-nine,) to answer the premises, and pending such further order and judgment as may be rendered in this cause, I do hereby order and enjoin the said Corporation, Respondents, and the said Respondents, the Reverend John Jenkins, Reverend Gavin Lang, William Walker, Esquire, Robert 10 Dennistoun, Esquire, Reverend John Cook, Reverend Daniel M. Gordon, Sir Hugh Allan, John L. Morris, Esquire, Reverend John H. Mackerras, William Darling, Esquire, and Alexander Mitchell, Esquire, and each of them forthwith, to suspend any and all acts and proceedings in their several capacities, respectively, in respect of the payment of all sums of money, and of the administration of the funds under the control of the said Corporation, Respondents, and in respect of all other matters in dispute in this cause, under pain of all penalties provided by law.

Montreal, 31st December, 1878.

(Signed), L. A. JETTÉ.
J.

(True copy).

Hubert, Stacey, & Gendron
P.S.C.

True Copies
Macmaster Hall & Greenshields
Attys for Petitioner